

AF/1624  
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MS AF  
REPLY UNDER  
37 C.F.R. § 1.116  
EXPEDITED PROCEDURE  
EXAMINING GROUP 1624

PATENT  
1422-0449P

IN THE U.S. PATENT AND TRADEMARK OFFICE

Applicant: IISHI, Eiichi et al. Conf.: 8402  
Appl. No.: 09/697,329 Group: 1624  
Filed: October 27, 2000 Examiner: Habte, Kahsay  
For: ANHYDROUS MIRTAZAPINE CRYSTALS AND  
PROCESS FOR PREPARING THE SAME

INFORMATION DISCLOSURE STATEMENT  
(SUBMISSION AFTER FINAL REJECTION)

**MS AF**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

November 23, 2004

Sir:

Pursuant to 37 C.F.R. §§ 1.97 and 1.98, applicant(s) hereby submit(s) an Information Disclosure Statement for consideration by the Examiner.

I. LIST OF PATENTS, PUBLICATIONS OR OTHER INFORMATION

The patents, publications, or other information submitted for consideration by the Office are listed on the PTO-1449(s), attached hereto.

II. COPIES (check at least one box)

- a.  Copies of cited U.S. patents and patent application publications are not included. Copies of foreign patent documents and non-patent literature are included.
- b.  Some or all of the documents listed on the PTO-1449 are not enclosed because they were cited in the International Search Report and copies should

already be in the PTO file. If copies are needed, please contact the undersigned.

**III. CONCISE EXPLANATION OF THE RELEVANCE**  
(check at least one box)

a.  **DOCUMENTS IN THE ENGLISH LANGUAGE**

The patents, publications, or other information listed on the attached PTO 1449 are in the English language and therefore, do not require a statement of relevancy.

b.  **DOCUMENTS NOT IN THE ENGLISH LANGUAGE**

A concise explanation of the relevance of all patents, publications, or other information listed that is not in the English language is as follows:

The relevance of the "Extract from Hunnius, Pharmazeutisches Wörterbuch," 8<sup>th</sup> Edition, de Gruyter 1998, 682 (a German language document) is explained in the enclosed Notice of Opposition originating in the corresponding European patent application.

c.  **ENGLISH LANGUAGE SEARCH REPORT**

An English language version of the search report or action that indicates the degree of relevance found by the foreign office is attached, thereby satisfying the requirement for a concise explanation. See MPEP 609(III)(A)(3).

d.  **OTHER**

The following additional information is provided for the Examiner's consideration.

A Notice of Opposition in the corresponding European patent application is attached hereto. Document "D1" has not been included in this IDS, since US 2001/0051718 is in the same patent family and is already of record. Documents "D2" and "D4" are already of record.

FEES

IV. THIS IDS IS BEING FILED UNDER 37 C.F.R. § 1.97(d) :

after the mailing date of a Final Action under § 1.113.

See the Statement Under 37 C.F.R. § 1.97(e).

V. STATEMENT UNDER 37 C.F.R. § 1.97(e) (check only one box)

The undersigned hereby states that

- a.  each item of information contained in the IDS was first cited in any communication from a foreign Patent Office in a counterpart foreign application not more than 30 days prior to the filing of this IDS; or
- b.  each item of information contained in the IDS was first cited in any communication from a foreign Patent Office in a counterpart foreign application not more than three months prior to the filing of this IDS; or
- c.  no item of information contained in the IDS was cited in a communication from a foreign Patent Office in a counterpart foreign application, and, to the knowledge of the person signing the certification after making reasonable inquiry, no item of IDS was known to any individual designated in 37 C.F.R. § 1.56(c) more than three months prior to the filing of the IDS.
- d.  Some of the items of information were cited in a communication from a foreign Patent Office. As to this information, the undersigned states that each item of information contained in the IDS was first cited in a communication from a foreign Patent Office in a counterpart foreign application not more than three months prior to the filing of this IDS. As to the remaining information, the undersigned hereby states that no item of this remaining information contained in the IDS was cited in a communication from a foreign Patent Office in a counterpart foreign application and, to the best of my knowledge after making reasonable inquiry, was known to any individual designated in 37 C.F.R. § 1.56(c) more than three months prior to the filing of this statement.

VI. PAYMENT OF FEES (check one box)

- A check in the amount of \$180.00 is enclosed for the fee required under 37 C.F.R. § 1.97(d) and as set forth in 37 C.F.R. § 1.17(p).
- Please charge Deposit Account No. 02-2448 in the amount of \$180.00 for the fee required under 37 C.F.R. § 1.97(d) and as set forth in 37 C.F.R. § 1.17(p). This paper is submitted in triplicate.

If the Examiner has any questions concerning this IDS, he/she is requested to contact the undersigned. If it is determined that this IDS has been filed under the wrong rule, the PTO is requested to consider this IDS under the proper rule and charge the appropriate fee to Deposit Account No. 02-2448.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. § 1.16 or under § 1.17; particularly, extension of time fees.

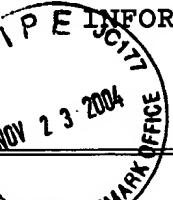
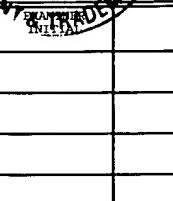
Respectfully submitted,

BIRCH, STEWART, KOLASCH & BIRCH, LLP

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GMM/GMD:kdm  
 1422-0449P

- Attachment(s):  PTO-1449  
 Documents  
 Foreign Search Report  
 Fee  
 Other: Notice of Opposition dated August 23,  
 2004 for corresponding European Appln.

Form PTO-1449		ATTY DOCKET NO. 1422-0449P	APPLICATION NO. 09/697,329				
<b>INFORMATION DISCLOSURE CITATION IN AN APPLICATION</b> <small>(Use several sheets if necessary)</small>		APPLICANT IISHI et al.					
		FILING DATE October 27, 2000	GROUP 1624				
<b>U.S. PATENT DOCUMENTS</b>							
	DOCUMENT NUMBER	DATE	NAME	CLASS	SUB CLASS	FILING DATE IF APPROPRIATE	
<b>FOREIGN PATENT DOCUMENTS</b>							
	DOCUMENT NUMBER	DATE	COUNTRY	CLASS	SUB CLASS	TRANSLATION	
						YES	NO
<b>OTHER DOCUMENTS</b> (Include Name of the author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc.) date, page(s), volume-issue number(s), publisher, city and/or country where published.)							
	Marjo Merslavic, Ph.D., "The Synthesis of Mirtazapine", Affidavit of Mr. Merslavic, July 28, 2004.						
	Extract from Hunnius, Pharmazeutisches Wörterbuch, 8 <sup>th</sup> Edition, de Gruyter 1998, page 682.						
EXAMINER		DATE CONSIDERED					

EXAMINER: Initial if citation considered, whether or not citation is in conformance with M.P.E.P. 609; Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.

Gouf GMM/GMD/kdm